

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MELVIN PARKER,

Plaintiff,

v.

WARDEN JEFF LYNCH, et al.,

Defendants.

No. 2:22-cv-2015 KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, with a civil rights action pursuant to 42 U.S.C. § 1983.

This court has determined that plaintiff's amended complaint should be severed from his original claim suing defendant West for allegedly hiring an inmate on October 31, 2019, to kill plaintiff. Plaintiff's amended complaint names Warden Lynch and Correctional Officers N. Burkeheart and J. Connelly for alleged sexual misconduct, retaliation, and a campaign of harassment from February of 2022 through June 2022, and reiterates his claim as to defendant West (count 4). The Federal Rules of Civil Procedure provide "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately." Fed. R. Civ. P. 21. Courts have broad discretion regarding severance. See Davis v. Mason County, 927 F.2d 1473, 1479 (9th Cir. 1991).

1 In the instant action, plaintiff is an individual in the custody of the California Department  
2 of Corrections and Rehabilitation, presently confined at California State Prison, Sacramento  
3 (“CSP-SAC”). By order filed November 30, 2022, the undersigned found plaintiff’s original  
4 complaint stated a potentially cognizable civil rights claim against defendant West based on  
5 plaintiff’s claim that defendant West allegedly hired an inmate to kill plaintiff on October 31,  
6 2019. Plaintiff was granted leave to proceed solely as to defendant West, or to amend his  
7 complaint to attempt to state claims related to his claim against defendant West. Plaintiff opted to  
8 amend. However, his amended complaint raises claims wholly unrelated to his Eighth  
9 Amendment claim against defendant West. Rather, his claims against defendants Lynch,  
10 Correctional Officers N. Burkeheart and J. Connelly for alleged sexual misconduct, retaliation,  
11 and a campaign of harassment that took place from February of 2022 through June 2022, and  
12 plaintiff includes no allegations connecting the actions of such defendants with the actions of  
13 defendant West on October 31, 2019.

14 Accordingly, the court orders that plaintiff’s claims be severed. Plaintiff’s claims as to  
15 defendant West will proceed in this action. Plaintiff’s claims as to defendants Lynch, N.  
16 Burkeheart, and J. Connelly will proceed in a new civil action to be opened by the Clerk of the  
17 Court. In addition, because plaintiff’s pending motion for injunctive relief is directed to his 2022  
18 claims, the Clerk of the Court shall also file the pending motion in the new action.

19 The Clerk of the Court is directed to assign the new action to the same magistrate judge  
20 assigned to the instant action and shall make appropriate adjustment in the assignment of civil  
21 cases to compensate for this reassignment.

22 Once this order is docketed, separate screening orders will issue in each case.

23 In accordance with the above, IT IS HEREBY ORDERED that:

24 1. Plaintiff’s 2022 claims against defendants J. Lynch, N. Burkeheart, and J. Connelly  
25 are severed from plaintiff’s claims against defendant West.

26 2. Plaintiff’s 2019 claim against defendant West shall proceed in this action.

27 3. The Clerk of the Court is directed to:

28 a. Open one separate civil action for plaintiff against defendants Lynch, N.

Burkeheart, and J. Connelly;

b. Assign the new action to the undersigned magistrate judge and make appropriate adjustment in the assignment of civil cases to compensate for such assignment;

c. File and docket a copy of this order in the new case opened for plaintiff;


d. File and docket the amended complaint (ECF No. 18) and the motion for preliminary injunction (ECF No. 19) in the new case opened for plaintiff;

e. Place a copy of the application to proceed in forma pauperis by a prisoner (ECF No. 2) in the new case opened for plaintiff;

f. Cross out “amended” in the caption of the pleading (ECF No. 18 at 1); strike count four (ECF No. 18 at 6:21 to 7:3) and strike Exhibit A1 from the pleading (ECF No. 18 at 8-10) filed in the new action; and

g. Send plaintiff an endorsed copy of his complaint bearing the amended caption and the case number assigned to the new action.

Dated: March 15, 2023

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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